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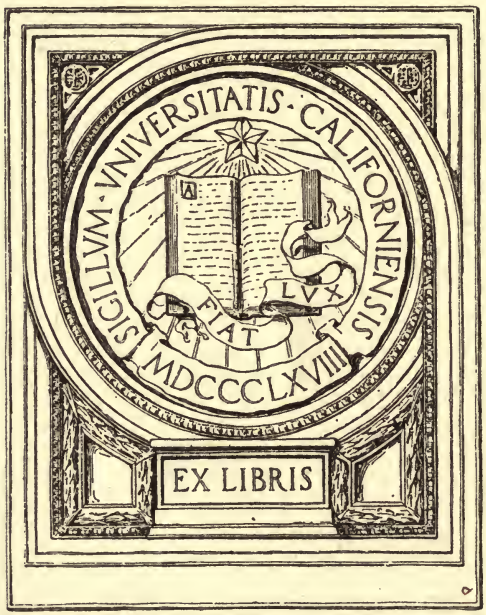
Trading with the Enemy Act

WITH THE REPORT ON THE ACT SUBMITTED TO THE SENATE BY THE COMMITTEE ON COMMERCE

National Bank of Commerce in New York

OCTOBER, 1917

GIFT OF
National Bank of Commerce.



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Trading with the Enemy Act

PART I.

Note by John Quinn.

PART II.

The Act, approved by the President, October 6, 1917.

PART III.

Report on the Act submitted to the Senate August 15, 1917, by the Senate Committee on Commerce.

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PART I.

Note

(The following note consists in large part of a reprint of a letter to The New York Times published prior to the enactment of the Trading with the Enemy Act and which attracted considerable attention. The writer is an authority upon the principles of international law governing transactions now covered by the Act, and his brief references to the salient provisions of the Act as regards banks and banking transactions will, it is believed, be found helpful).

The "Trading with the Enemy Act" which has just been enacted into law is one of the most important pieces of administrative legislation enacted to meet the problems raised by the war. It deals with a great variety of subjects, among them the delicate matters of administering patent rights, controlling foreign insurance, censorship of cables and mails, in addition to banking transactions. Since this brochure is designed primarily for bankers, and since the Act, considered from a standpoint of public policy, is most deeply concerned with banking transactions, I have limited myself here to a discussion of the banking portions of the Act.

The Act gives bankers and other business men, as I wrote to *The New York Times* September 5, 1917, when it was under consideration before the Senate, "a perfectly definite law to follow." It had come to my attention prior to that time that some banks and bankers had "a rather surprising lack of knowledge of the legal effect of a declaration of war." Because of my belief that that lack of knowledge was leading to dangerous consequences, I went to Washington and urged Senator Fletcher, Chairman of the Senate Committee on Commerce, to do everything in his power to expedite the passage of the then pending Act, which was then in the hands of a subcommittee of his committee. Senator Fletcher called a meeting of the full committee on the following day and the bill was very shortly reported out, with many very admirable amendments. As I said in my letter to *The Times*, the banking transactions at which the Act is aimed are "of the utmost concern to the speedy success of the nation and its Allies in the present war." In my letter to *The Times* I said further:

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"A large part of the support which America is thus far giving to its allies in this war is financial. All of the belligerents are directly concerned with maintaining their credit and the parity of exchange, not only in Europe, but in South America and the Orient. It should not be necessary to say that anything which promotes the business and financial interests of enemy countries or citizens or subjects of enemy countries, or which expedites payments or business ventures of citizens or subjects of enemy countries, including the maintenance of their credit, and which gives them the use of banking facilities in neutral countries, is a military advantage, and that anything which hinders the freedom of their exchange, deprives them of the use of banking facilities, and lowers their credit is a military disadvantage.

"In a war of the present world-wide dimensions the old forms of trading with the enemy, involving the physical transfer of tangible goods, are largely obsolete. Germany's one attempt to imitate the blockade runners of the Civil War with the submarine Deutschland was abruptly abandoned. The entry of America into the war, followed by President Wilson's embargo, has, we all sincerely hope, put a stop to the surreptitious smuggling of American goods into Germany through the territories of contiguous neutrals. The chief form of trade, therefore, in which Germany can engage to her advantage is that within the limit of banking transactions.

"It is well known that one of Germany's methods of capturing world trade was the establishment of strong banks with subsidiaries in Central and South America and the Orient. It is by manipulations through these banks that German exchange is to be maintained and German credit bolstered, if at all, during the present struggle. This war is being fought with money as well as with men. It is a great advantage to Germany to keep up the purchasing power of the mark. Anything which would tend to beat down the value of the mark is of advantage to the allies. It would therefore seem to be a patriotic duty on the part of bankers to refrain from any dealings whatever with German banks or their South American or Oriental subsidiaries."

In discussing the then pending Act in my letter to *The Times* of September 5th, I further said:

"The Trading with the Enemy Act itself is stated by both the House and Senate Committee reports to be declaratory of the existing common law of the United States. In its definitions of trade, the Act lays particular emphasis on banking transactions. The word 'trade' is thus defined:

(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation;

(b) Draw, accept, pay, present for acceptance or payment, or endorse any negotiable instrument or chose in action;

(c) Enter into, carry on, complete, or perform any contract, agreement, or obligation;

(d) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property;

(e) To have any form of business or commercial communication or intercourse with.

"The Act does not have the effect of making illegal anything which is legal at the present time, with but one exception, namely, that it prohibits dealings with allies of an enemy, such as Austria, which is not forbidden by existing international law. Its passage does not mean, as I have pointed out, that any prior transactions were legalized.

"Two main effects will result from its passage. The first will be to add a criminal penalty to the civil penalties and dangers which now attach to the acts prohibited by the international law of this country, as evidenced by the decisions of our Courts. The other effect will be to permit the licensing of certain acts and payments under strict Government supervision within very closely defined limits for the purpose of mitigating the present rules of law which prohibit every sort of transaction with an enemy. As was stated in the Senate report,

'The purpose of this Bill is to mitigate the rules of law which prohibit all intercourse between the citizens of warring nations, and to permit, under careful safeguards and restrictions, certain kinds of business to be carried on. It also provides for the care and administration of the property and property rights of enemies and their allies in this country pending the war. The spirit of the Act is to

permit such business intercourse as may be beneficial to citizens of this country, under rules and regulations of the Secretary of Commerce, (now the President) which will prevent all enemies and their allies from receiving any benefits therefrom until after the war closes, leaving to the Courts and to the future action of Congress the adjustment of rights and claims arising from such transactions.'"

As I explained in my letter to *The Times*, even prior to the passage of the Act, it was not only the patriotic duty of bankers to refrain from dealings with alien enemies, but it was their legal duty to do so. The Trading with the Enemy Act not only extends what I may call the common international law of civilized countries, as distinguished from the perversions and distortions of what had been believed to be international law that in this war have been resorted to by the countries who speak of and treat solemn treaties as "mere scraps of paper," so as to make illegal transactions with allies of enemies as well as with enemies, for example with Austrians as well as Germans, but it places the acts in question in the category of crimes and adds fine and imprisonment to the machinery for their prohibition. I need not refer here at length to the drastic penal provisions of the Act, for I am sure that the whole Act so far as it relates to banks and bankers will receive the careful attention of the banking world generally in this country.

The Act will tend to relieve the hardship which might otherwise be imposed upon persons residing in this country dependent for their support upon foreign funds deposited in American banks prior to the declaration of war. Such payments may by express provision be licensed by permission of the Secretary of Commerce. The Act excludes from its licensing provisions:

"Any act or attempted act of transmission, or transfer of money or other property out of the United States, and the use or attempted use of such money or property as the basis for the establishment of any credit within or outside of the United States, to, or for the benefit of, or on account of, an enemy or ally of an enemy."

The events and revelations of the past few days, showing the criminal activities of German and pro-German plotters in this country while we were still at peace, seem to me amply to justify what I said in my *Times* letter about "the wide use of German money in this country during the

last two or three years to bribe, to subsidize pro-German propaganda, to incite labor disputes, and to bring about explosions and the burning of property, involving in many cases wholesale murder." One of the good effects of the Act should be promptly to dam up physically the stream of German money which has been the means of promoting such material and malicious mischief.

As finally passed with the Senate amendments, the Act is an admirable piece of legislation. It not only points out what may not be done and prescribes appropriate penalties, but it indicates the proper procedure for obtaining Government permission to carry out transactions under proper safeguards to mitigate the possible harsh cases under the general law. One of the most important features of the Act provides for the taking over of alien property, its conservation in the hands of the alien property custodian, and its investment in United States bonds. This investment feature is an entirely new provision of law, and as stated in the Senate Report, is found in no previous statute, and is in line with modern policies with reference to private property in time of war. The alien property custodian is, by the Act, vested with all the powers of a common law trustee. The act authorizes the investment in United States bonds of the funds of alien enemies held by American banks, thus making them contribute to the success of the national cause. This is an eminently just measure, since it provides a method for keeping them safely, preventing their use for enemy purposes and making them serve a public purpose. When we realize that under the former harsh laws of war, such funds might have been confiscated, and when we recall to mind the levying of forced loans with scant chance of repayment by the Germans in Belgium and Northern France, this provision of the act seems not only just, but generous. One of the best features of the Act is its elasticity. It gives wide discretionary powers to the President and makes it possible for him to deal quickly and effectively with special situations as they arise.

JOHN QUINN,
31 Nassau Street, New York.

PART II.

Trading with the Enemy Act

Approved October 6, 1917

(Public No. 91—65th Congress)
(H. R. 4960)

An Act to define, regulate, and punish trading with the enemy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Trading with the enemy Act."

SEC. 2. That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

The words "ally of enemy," as used herein, shall be deemed to mean—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

The words "United States," as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof.

The words "the beginning of the war," as used herein, shall be deemed to mean midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war.*

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*April 6th, 1917.

The words "end of the war," as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this Act.

The words "bank or banks," as used herein, shall be deemed to mean and include national banks, State banks, trust companies, or other banks or banking associations doing business under the laws of the United States, or of any State of the United States.

The words "to trade," as used herein, shall be deemed to mean—

(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.

(b) Draw, accept, pay, present for acceptance or payment, or indorse any negotiable instrument or chose in action.

(c) Enter into, carry on, complete, or perform any contract, agreement, or obligation.

(d) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property.

(e) To have any form of business or commercial communication or intercourse with.

SEC. 3. That it shall be unlawful—

(a) For any person in the United States, except with the license of the President, granted to such person, or to the enemy, or ally of enemy, as provided in this Act, to trade, or attempt to trade, either directly or indirectly, with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade, directly or indirectly, for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy.

(b) For any person, except with the license of the President, to transport or attempt to transport into or

from the United States, or for any owner, master, or other person in charge of a vessel of American registry to transport or attempt to transport from any place to any other place, any subject or citizen of an enemy or ally of enemy nation, with knowledge or reasonable cause to believe that the person transported or attempted to be transported is such subject or citizen.

(c) For any person (other than a person in the service of the United States Government or of the Government of any nation, except that of an enemy or ally of enemy nation, and other than such persons or classes of persons as may be exempted hereunder by the President or by such person as he may direct), to send, or take out of, or bring into, or attempt to send, or take out of, or bring into the United States, any letter or other writing or tangible form of communication, except in the regular course of the mail; and it shall be unlawful for any person to send, take, or transmit, or attempt to send, take, or transmit out of the United States, any letter or other writing, book, map, plan, or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy: Provided, however, That any person may send, take, or transmit out of the United States anything herein forbidden if he shall first submit the same to the President, or to such officer as the President may direct, and shall obtain the license or consent of the President, under such rules and regulations, and with such exemptions, as shall be prescribed by the President.

(d) Whenever, during the present war, the President shall deem that the public safety demands it, he may cause to be censored under such rules and regulations as he may from time to time establish, communications by mail, cable, radio, or other means of transmission passing between the United States and any foreign country he may from time to time specify, or which may be carried by any vessel or other means of transportation touching at any port, place, or territory of the United States and bound to or from any foreign country. Any person who

willfully evades or attempts to evade the submission of any such communication to such censorship or willfully uses or attempts to use any code or other device for the purpose of concealing from such censorship the intended meaning of such communication shall be punished as provided in section sixteen of this Act.

SEC. 4. (a) Every enemy or ally of enemy insurance or reinsurance company, and every enemy or ally of enemy, doing business within the United States through an agency or branch office, or otherwise, may, within thirty days after the passage of this Act, apply to the President for a license to continue to do business; and, within thirty days after such application, the President may enter an order either granting or refusing to grant such license. The license, if granted, may be temporary or otherwise, and for such period of time, and may contain such provisions and conditions regulating the business, agencies, managers and trustees and the control and disposition of the funds of the company, or of such enemy or ally of enemy, as the President shall deem necessary for the safety of the United States; and any license granted hereunder may be revoked or regranted or renewed in such manner and at such times as the President shall determine: Provided, however, That reasonable notice of his intent to refuse to grant a license or to revoke a license granted to any reinsurance company shall be given by him to all insurance companies incorporated within the United States and known to the President to be doing business with such reinsurance company: Provided further, That no insurance company, organized within the United States, shall be obligated to continue any existing contract, entered into prior to the beginning of the war, with any enemy or ally of enemy insurance or reinsurance company, but any such company may abrogate and cancel any such contract by serving thirty days' notice in writing upon the President of its election to abrogate such contract.

For a period of thirty days after the passage of this Act, and further pending the entry of such order by the President, after application made by any enemy or ally of

enemy insurance or reinsurance company, within such thirty days as above provided, the provisions of the President's proclamation of April sixth, nineteen hundred and seventeen, relative to agencies in the United States of certain insurance companies, as modified by the provisions of the President's proclamation of July thirteenth, nineteen hundred and seventeen, relative to marine and war-risk insurance, shall remain in full force and effect so far as it applies to such German insurance companies, and the conditions of said proclamation of April sixth, nineteen hundred and seventeen, as modified by said proclamation of July thirteenth, nineteen hundred and seventeen, shall also during said period of thirty days after the passage of this Act, and pending the order of the President as herein provided, apply to any enemy or ally of enemy insurance or reinsurance company, anything in this Act to the contrary notwithstanding. It shall be unlawful for any enemy or ally of enemy insurance or reinsurance company, to whom license is granted, to transmit out of the United States any funds belonging to or held for the benefit of such company or to use any such funds as the basis for the establishment directly or indirectly of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of, an enemy or ally of enemy.

For a period of thirty days after the passage of this Act, and further pending the entry of such order by the President, after application made within such thirty days by any enemy or ally of enemy, other than an insurance or reinsurance company as above provided, it shall be lawful for such enemy or ally of enemy to continue to do business in this country and for any person to trade with, to, from, for, on account of, on behalf of or for the benefit of such enemy or ally of enemy, anything in this Act to the contrary notwithstanding: Provided, however, That the provisions of sections three and sixteen hereof shall apply to any act or to any attempted act of transmission or transfer of money or other property out of the United States and to the use or attempted use of such money or property as the basis for the establishment of any credit within or outside of the United States to, or for the

benefit of, or on behalf of, or on account of, an enemy or ally of enemy.

If no license is applied for within thirty days after the passage of this Act, or if a license shall be refused to any enemy or ally of enemy, whether insurance or reinsurance company, or other person, making application, or if any license granted shall be revoked by the President, the provisions of sections three and sixteen hereof shall forthwith apply to all trade or to any attempt to trade with, to, from, for, by, on account of, or on behalf of, or for the benefit of such company or other person: Provided, however, That after such refusal or revocation, anything in this Act to the contrary notwithstanding, it shall be lawful for a policyholder or for an insurance company, not an enemy or ally of enemy, holding insurance or having effected reinsurance in or with such enemy or ally of enemy insurance or reinsurance company, to receive payment of, and for such enemy or ally of enemy insurance or reinsurance company to pay any premium, return premium, claim, money, security, or other property due or which may become due on or in respect to such insurance or reinsurance in force at the date of such refusal or revocation of license; and nothing in this Act shall vitiate or nullify then existing policies or contracts of insurance or reinsurance, or the conditions thereof; and any such policyholder or insurance company, not an enemy or ally of enemy, having any claim to or upon money or other property of the enemy or ally of enemy insurance or reinsurance company in the custody or control of the alien property custodian, hereinafter provided for, or of the Treasurer of the United States, may make application for the payment thereof and may institute suit as provided in section nine hereof.

(b) That, during the present war, no enemy, or ally of enemy, and no partnership of which he is a member or was a member at the beginning of the war, shall for any purpose assume or use any name other than that by which such enemy or partnership was ordinarily known at the beginning of the war, except under license from the President.

Whenever, during the present war, in the opinion of the President the public safety or public interest requires the President may prohibit any or all foreign insurance companies from doing business in the United States, or the President may license such company or companies to do business upon such terms as he may deem proper.

SEC. 5. (a) That the President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this Act so far as they apply to an ally of enemy, and he may revoke or renew such suspension from time to time; and the President may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (a) of section four hereof, and to perform any act made unlawful without such license in section three hereof, and to file and prosecute applications under subsection (b) of section ten hereof; and he may revoke or renew such licenses from time to time, if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war; and he may make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this Act; and the President may exercise any power or authority conferred by this Act through such officer or officers as he shall direct.

If the President shall have reasonable cause to believe that any act is about to be performed in violation of section three hereof he shall have authority to order the postponement of the performance of such act for a period not exceeding ninety days, pending investigation of the facts by him.

(b) That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, export or ear-markings of gold

or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States), and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, whether enemy, ally of enemy or otherwise, or between residents of one or more foreign countries, by any person within the United States; and he may require any such person engaged in any such transaction to furnish, under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed.

SEC. 6. That the President is authorized to appoint, prescribe the duties of, and fix the salary (not to exceed $5,000 per annum) of an official to be known as the alien property custodian, who shall be empowered to receive all money and property in the United States due or belonging to an enemy, or ally of enemy, which may be paid, conveyed, transferred, assigned, or delivered to said custodian under the provisions of this Act; and to hold, administer, and account for the same under the general direction of the President and as provided in this Act. The alien property custodian shall give such bond or bonds, and in such form and amount, and with such security as the President shall prescribe. The President may further employ in the District of Columbia and elsewhere and fix the compensation of such clerks, attorneys, investigators, accountants, and other employees as he may find necessary for the due administration of the provisions of this Act: Provided, That such clerks, investigators, accountants, and other employees shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law: Provided further, That the President shall cause a detailed report to be made to Congress on the first day of January of each year of all proceedings had under this Act during the year preceding. Such report shall contain a list of all persons appointed or employed, with the salary or com-

pensation paid to each, and a statement of the different kinds of property taken into custody and the disposition made thereof.

SEC. 7. (a) That every corporation incorporated within the United States, and every unincorporated association, or company, or trustee, or trustees within the United States, issuing shares or certificates representing beneficial interests, shall, under such rules and regulations as the President may prescribe and, within sixty days after the passage of this Act, and at such other times thereafter as the President may require, transmit to the alien property custodian a full list, duly sworn to, of every officer, director, or stockholder known to be, or whom the representative of such corporation, association, company, or trustee has reasonable cause to believe to be an enemy or ally of enemy resident within the territory, or a subject or citizen residing outside of the United States, of any nation with which the United States is at war, or resident within the territory, or a subject or citizen residing outside of the United States, of any ally of any nation with which the United States is at war, together with the amount of stock or shares owned by each such officer, director, or stockholder, or in which he has any interest.

The President may also require a similar list to be transmitted of all stock or shares owned on February third, nineteen hundred and seventeen, by any person now defined as an enemy or ally of enemy, or in which any such person had any interest; and he may also require a list to be transmitted of all cases in which said corporation, association, company, or trustee has reasonable cause to believe that the stock or shares on February third, nineteen hundred and seventeen, were owned or are owned by such enemy or ally of enemy, though standing on the books in the name of another: Provided, however, That the name of any such officer, director, or stockholder shall be stricken permanently or temporarily from such list by the alien property custodian when he shall be satisfied that he is not such enemy or ally of enemy.

Any person in the United States who holds or has or shall hold or have custody or control of any property

beneficial or otherwise, alone or jointly with others, of, for, or on behalf of an enemy or ally of enemy, or of any person whom he may have reasonable cause to believe to be an enemy or ally of enemy and any person in the United States who is or shall be indebted in any way to an enemy or ally of enemy, or to any person whom he may have reasonable cause to believe to be an enemy or ally of enemy, shall, with such exceptions and under such rules and regulations as the President shall prescribe, and within thirty days after the passage of this Act, or within thirty days after such property shall come within his custody or control, or after such debt shall become due, report the fact to the alien-property custodian by written statement under oath, containing such particulars as said custodian shall require. The President may also require a similar report of all property so held, of, for, or on behalf of, and of all debts so owed to, any person now defined as an enemy or ally of enemy, on February third, nineteen hundred and seventeen: Provided, That the name of any person shall be stricken from the said report by the alien-property custodian, either temporarily or permanently, when he shall be satisfied that such person is not an enemy or ally of enemy.

The President may extend the time for filing the lists or reports required by this section for an additional period not exceeding ninety days.

(b) Nothing in this Act contained shall render valid or legal, or be construed to recognize as valid or legal, any act or transaction constituting trade with, to, from, for or on account of, or on behalf or for the benefit of an enemy performed or engaged in since the beginning of the war and prior to the passage of this Act, or any such act or transaction hereafter performed or engaged in except as authorized hereunder, which would otherwise have been or be void, illegal, or invalid at law. No conveyance, transfer, delivery, payment, or loan of money or other property, in violation of section three hereof, made after the passage of this Act and not under license as herein provided shall confer or create any right or remedy in respect thereof; and no person shall by virtue of any assign-

ment, indorsement, or delivery to him of any debt, bill, note, or other obligation or chose in action by, from, or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy have any right or remedy against the debtor, obligor, or other person liable to pay, fulfill, or perform the same unless said assignment, indorsement, or delivery was made prior to the beginning of the war or shall be made under license as herein provided, or unless, if made after the beginning of the war and prior to the date of passage of this Act, the person to whom the same was made shall prove lack of knowledge and of reasonable cause to believe on his part that the same was made by, from or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy; and any person who knowingly pays, discharges, or satisfies any such debt, note, bill, or other obligation or chose in action shall, on conviction thereof, be deemed to violate section three hereof: Provided, That nothing in this Act contained shall prevent the carrying out, completion, or performance of any contract, agreement, or obligation originally made with or entered into by an enemy or ally of enemy where, prior to the beginning of the war and not in contemplation thereof, the interest of such enemy or ally of enemy devolved by assignment or otherwise upon a person not an enemy or ally of enemy, and no enemy or ally of enemy will be benefited by such carrying out, completion, or performance otherwise than by release from obligation thereunder.

Nothing in this Act shall be deemed to prevent payment of money belonging or owing to an enemy or ally of enemy to a person within the United States, not an enemy or ally of enemy, for the benefit of such person or of any other person within the United States, not an enemy or ally of enemy, if the funds so paid shall have been received prior to the beginning of the war and such payments arise out of transactions entered into prior to the beginning of the war, and not in contemplation thereof: Provided, That such payment shall not be made without the license of the President, general or special, as provided in this Act.

Nothing in this Act shall be deemed to authorize the prosecution of any suit or action at law or in equity in any

court within the United States by an enemy or ally of enemy prior to the end of the war, except as provided in section ten hereof: Provided, however, That an enemy or ally of enemy licensed to do business under this Act may prosecute and maintain any such suit or action so far as the same arises solely out of the business transacted within the United States under such license and so long as such license remains in full force and effect: And, provided further, That an enemy or ally of enemy may defend by counsel any suit in equity or action at law which may be brought against him.

Receipt of notice from the President to the effect that he has reasonable ground to believe that any person is an enemy or ally of enemy shall be prima facie defense to any one receiving the same, in any suit or action at law or in equity brought or maintained, or to any right or set-off or recoupment asserted by, such person and based on failure to complete or perform since the beginning of the war any contract or other obligation. In any prosecution under section sixteen hereof, proof of receipt of notice from the President to the effect that he has reasonable cause to believe that any person is an enemy or ally of enemy shall be prima facie evidence that the person receiving such notice has reasonable cause to believe such other person to be an enemy or ally of enemy within the meaning of section three hereof.

(c) If the President shall so require, any money or other property owing or belonging to, or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian.

(d) If not required to pay, convey, transfer, assign, or deliver under the provisions of subsection (c) hereof, any person not an enemy or ally of enemy who owes to, or holds for, or on account of, or on behalf of, or for the benefit of an enemy or of an ally of enemy not holding a license granted by the President hereunder, any money or

other property, or to whom any obligation or form of liability to such enemy or ally of enemy is presented for payment, may, at his option, with the consent of the President, pay, convey, transfer, assign, or deliver to the alien property custodian said money or other property under such rules and regulations as the President shall prescribe.

(e) No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee. The President shall issue to every person so appointed a certificate of the appointment and authority of such person, and such certificate shall be received in evidence in all courts within the United States. Whenever any such certificate of authority shall be offered to any registrar, clerk, or other recording officer, Federal or otherwise, within the United States, such officer shall record the same in like manner as a power of attorney, and such record or a duly certified copy thereof shall be received in evidence in all courts of the United States or other courts within the United States.

SEC. 8. (a) That any person not an enemy or ally of enemy holding a lawful mortgage, pledge, or lien, or other right in the nature of security in property of an enemy or ally of enemy which, by law or by the terms of the instrument creating such mortgage, pledge, or lien, or right, may be disposed of on notice or presentation or demand, and any person not an enemy or ally of enemy who is a party to any lawful contract with an enemy or ally of enemy, the terms of which provide for a termination thereof upon notice or for acceleration of maturity on presentation or demand, may continue to hold said property, and, after default, may dispose of the property in accordance with law or may terminate or mature such contract by notice or presentation or demand served or made on the alien property custodian in accordance with the law and the terms of such instrument or contract and under such rules and regulations as the President shall prescribe; and such notice and such presentation and demand shall have, in all respects, the same force and effect as if duly served or made upon the enemy or ally of enemy personally: Provided, That no such rule or regulation shall require that notice or presentation or demand shall be served or made in any case in which, by law or by the terms of said instrument or contract, no notice, presentation, or demand was, prior to the passage of this Act, required; and that in case where, by law or by the terms of such instrument or contract, notice is required, no longer period of notice shall be required: Provided further, That if, on any such disposition of property, a surplus shall remain after the satisfaction of the mortgage, pledge, lien, or other right in the nature of security, notice of that fact shall be given to the President pursuant to such rules and regulations as he may prescribe, and such surplus shall be held subject to his further order.

(b) That any contract entered into prior to the beginning of the war between any citizen of the United States or any corporation organized within the United States, and an enemy or ally of an enemy, the terms of which provide for the delivery, during or after any war in

which a present enemy or ally of enemy nation has been or is now engaged, of anything produced, mined, or manufactured in the United States, may be abrogated by such citizen or corporation by serving thirty days' notice in writing upon the alien property custodian of his or its election to abrogate such contract.

(c) The running of any statute of limitations shall be suspended with reference to the rights or remedies on any contract or obligation entered into prior to the beginning of the war between parties neither of whom is an enemy or ally of enemy, and containing any promise to pay or liability for payment which is evidenced by drafts or other commercial paper drawn against or secured by funds or other property situated in an enemy or ally of enemy country, and no suit shall be maintained on any such contract or obligation in any court within the United States until after the end of the war, or until the said funds or property shall be released for the payment or satisfaction of such contract or obligation: Provided, however, That nothing herein contained shall be construed to prevent the suspension of the running of the statute of limitations in all other cases where such suspension would occur under existing law.

SEC. 9. That any person, not an enemy, or ally of enemy, claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder, and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy, or ally of enemy, whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder, and held by him or by the Treasurer of the United States, may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may, with the assent of the owner of said property and of all persons claiming any right, title, or interest therein, order the payment, conveyance, transfer, assignment or

delivery to said claimant of the money or other property so held by the alien property custodian or by the Treasurer of the United States or of the interest therein to which the President shall determine said claimant is entitled: Provided, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application, or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six months after the end of the war, institute a suit in equity in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the alien property custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if suit shall be so instituted then the money or other property of the enemy, or ally of enemy, against whom such interest, right, or title is asserted, or debt claimed, shall be retained in the custody of the alien property custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant or by the alien property custodian or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant, or suit otherwise terminated.

Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the alien property custodian shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court.

This section shall not apply, however, to money paid to the alien property custodian under section ten hereof.

SEC. 10. That nothing contained in this Act shall be held to make unlawful any of the following Acts:

(a) An enemy, or ally or enemy, may file and prosecute in the United States an application for letters patent, or for registration of trade-mark, print, label, or copyright, and may pay any fees therefor in accordance with and as required by the provisions of existing law and fees for attorneys or agents for filing and prosecuting such applications. Any such enemy, or ally of enemy, who is unable during war, or within six months thereafter, on account of conditions arising out of war, to file any such application, or to pay any official fee, or to take any action required by law within the period prescribed by law, may be granted an extension of nine months beyond the expiration of said period, provided the nation of which the said applicant is a citizen, subject, or corporation shall extend substantially similar privileges to citizens and corporations of the United States.

(b) Any citizen of the United States, or any corporation organized within the United States, may, when duly authorized by the President, pay to an enemy or ally of enemy any tax, annuity, or fee which may be required by the laws of such enemy or ally of enemy nation in relation to patents and trade-marks, prints, labels, and copyrights; and any such citizen or corporation may file and prosecute an application for letters patent or for registration of trade-mark, print, label, or copyright in the country of an enemy, or of an ally of enemy after first submitting such application to the President and receiving license so to file and prosecute, and to pay the fees required by law and customary agents' fees, the maximum amount of which in each case shall be subject to the control of the President.

(c) Any citizen of the United States or any corporation organized within the United States desiring to manufacture, or cause to be manufactured, a machine, manufacture, composition of matter, or design, or to carry on, or cause to be carried on, a process under any patent or to use any trade-mark, print, label, or copyrighted matter owned or controlled by an enemy or ally of enemy at any

time during the existence of a state of war may apply to the President for a license; and the President is hereby authorized to grant such a license, nonexclusive or exclusive as he shall deem best, provided he shall be of the opinion that such grant is for the public welfare, and that the applicant is able and intends in good faith to manufacture, or cause to be manufactured, the machine, manufacture, composition of matter, or design, or to carry on, or cause to be carried on, the process or to use the trade-mark, print, label, or copyrighted matter. The President may prescribe the conditions of this license, including the fixing of prices of articles and products necessary to the health of the military and naval forces of the United States or the successful prosecution of the war, and the rules and regulations under which such license may be granted and the fee which shall be charged therefor, not exceeding $100, and not exceeding one per centum of the fund deposited as hereinafter provided. Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent, trade-mark, print, label or copyright, or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof.

(d) The licensee shall file with the President a full statement of the extent of the use and enjoyment of the license, and of the prices received in such form and at such stated periods (at least annually) as the President may prescribe; and the licensee shall pay at such times as may be required to the alien property custodian not to exceed five per centum of the gross sums received by the licensee from the sale of said inventions or use of the trade-mark, print, label or copyrighted matter, or, if the President shall so order, five per centum of the value of the use of such inventions, trade-marks, prints, labels or copyrighted matter to the licensee as established by the President; and sums so paid shall be deposited by said alien property custodian forthwith in the Treasury of the United States as a trust fund for the said licensee and for the owner of

the said patent, trade-mark, print, label or copyright registration as hereinafter provided, to be paid from the Treasury upon order of the court, as provided in subdivision (f) of this section, or upon the direction of the alien property custodian.

(e) Unless surrendered or terminated as provided in this Act, any license granted hereunder shall continue during the term fixed in the license or in the absence of any such limitation during the term of the patent, trade-mark, print, label, or copyright registration under which it is granted. Upon violation by the licensee of any of the provisions of this Act, or of the conditions of the license, the President may, after due notice and hearing, cancel any license granted by him.

(f) The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter: Provided, however, That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: Provided further, That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment and decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be

repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit, shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable.

(g) Any enemy, or ally of enemy, may institute and prosecute suits in equity against any person other than a licensee under this Act to enjoin infringement of letters patent, trade-mark, print, label, and copyrights in the United States owned or controlled by said enemy or ally of enemy, in the same manner and to the extent that he would be entitled so to do if the United States was not at war: Provided, That no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after thirty days' notice to the alien property custodian, such notice shall be in writing and shall be served in the same manner as civil process of Federal courts.

(h) All powers of attorney heretofore or hereafter granted by an enemy or ally of enemy to any person within the United States, in so far as they may be requisite to the performance of acts authorized in subsections (a) and (g) of this section shall be valid.

(i) Whenever the publication of an invention by the granting of a patent may, in the opinion of the President, be detrimental to the public safety or defense, or may assist the enemy or endanger the successful prosecution of the war, he may order that the invention be kept secret

and withhold the grant of a patent until the end of the war: Provided, That the invention disclosed in the application for said patent may be held abandoned upon it being established before or by the Commissioner of Patents that, in violation of said order, said invention has been published or that an application for a patent therefor has been filed in any other country, by the inventor or his assigns or legal representatives, without the consent or approval of the commissioner or under a license of the President.

When an applicant whose patent is withheld as herein provided and who faithfully obeys the order of the President above referred to shall tender his invention to the Government of the United States for its use, he shall, if he ultimately receives a patent, have the right to sue for compensation in the Court of Claims, such right to compensation to begin from the date of the use of the invention by the Government.

SEC. 11. Whenever during the present war the President shall find that the public safety so requires and shall make proclamation thereof it shall be unlawful to import into the United States from any country named in such proclamation any article or articles mentioned in such proclamation except at such time or times, and under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress: Provided, however, That no preference shall be given to the ports of one State over those of another.

SEC. 12. That all moneys (including checks and drafts payable on demand) paid to or received by the alien property custodian pursuant to this Act shall be deposited forthwith in the Treasury of the United States, and may be invested and reinvested by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness, under such rules and regulations as the President shall prescribe for such deposit, investment, and sale of securities; and as soon after the end of the war as the President shall deem practicable, such secu-

rities shall be sold and the proceeds deposited in the Treasury.

All other property of an enemy, or ally of enemy, conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder shall be safely held and administered by him except as hereinafter provided; and the President is authorized to designate as a depositary, or depositaries, of property of an enemy or ally of enemy, any bank, or banks, or trust company, or trust companies, or other suitable depositary or depositaries, located and doing business in the United States. The alien property custodian may deposit with such designated depositary or depositaries, or with the Secretary of the Treasury, any stocks, bonds, notes, time drafts, time bills of exchange, or other securities, or property (except money or checks or drafts payable on demand which are required to be deposited with the Secretary of the Treasury) and such depositary or depositaries shall be authorized and empowered to collect any dividends or interest or income that may become due and any maturing obligations held for the account of such custodian. Any moneys collected on said account shall be paid and deposited forthwith by said depositary or by the alien property custodian into the Treasury of the United States as hereinbefore provided.

The President shall require all such designated depositaries to execute and file bonds sufficient in his judgment to protect property on deposit, such bonds to be conditioned as he may direct.

The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this Act, and, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, may manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights which may be or become appurtenant thereto or to the ownership thereof, if and

when necessary to prevent waste and protect such property and to the end that the interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him.

Any money or property required or authorized by the provisions of this Act to be paid, conveyed, transferred, assigned, or delivered to the alien property custodian shall, if said custodian shall so direct by written order, be paid, conveyed, transferred, assigned, or delivered to the Treasurer of the United States with the same effect as if to the alien property custodian.

After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct: Provided, however, That on order of the President as set forth in section nine hereof, or of the court, as set forth in sections nine and ten hereof, the alien property custodian or the Treasurer of the United States, as the case may be, shall forthwith convey, transfer, assign, and pay to the person to whom the President shall so order, or in whose behalf the court shall enter final judgment or decree, any property of an enemy or ally of enemy held by said custodian or by said Treasurer, so far as may be necessary to comply with said order of the President or said final judgment or decree of the court: And provided further, That the Treasurer of the United

States, on order of the alien property custodian shall, as provided in section ten hereof, repay to the licensee any funds deposited by said licensee.

SEC. 13. That, during the present war, in addition to the facts required by sections forty-one hundred and ninety-seven, forty-one hundred and ninety-eight, and forty-two hundred of the Revised Statutes, as amended by the Act of June fifteenth, nineteen hundred and seventeen,* to be set out in the master's and shipper's manifests before clearance will be issued to vessels bound to foreign ports, the master or person in charge of any vessel, before departure of such vessel from port, shall deliver to the collector of customs of the district wherein such vessel is located a statement duly verified by oath that the cargo is not shipped or to be delivered in violation of this act, and the owners, shippers, or consignors of the cargo of such vessels shall in like manner deliver to the collector like statement under oath as to the cargo or the parts thereof laden or shipped by them, respectively, which statement shall contain also the names and addresses of the actual consignees of the cargo, or if the shipment is made to a bank or other broker, factor, or agent, the names and addresses of the persons who are the actual consignees on whose account the shipment is made. The master or person in control of the vessel shall, on reaching port of destination of any of the cargo, deliver a copy of the manifest and of the said master's, owner's, shipper's, or consignor's statement to the American consular officer of the district in which the cargo is unladen.

SEC. 14. That, during the present war, whenever there is reasonable cause to believe that the manifest or the additional statements under oath required by the preceding section are false or that any vessel, domestic or foreign, is about to carry out of the United States any property to or for the account or benefit of an enemy, or ally of enemy, or any property or person whose export, taking out, or transport will be in violation of this Act, the collector of customs for the district in which such

*The Espionage Act.

vessel is located is hereby authorized and empowered, subject to review by the President, to refuse clearance to any such vessel, domestic or foreign, for which clearance is required by law, and by formal notice served upon the owners, master, or person or persons in command or charge of any domestic vessel for which clearance is not required by law, to forbid the departure of such vessel from the port, and it shall thereupon be unlawful for such vessel to depart. The collector of customs shall, during the present war, in each case report to the President the amount of gold or silver coin or bullion or other moneys of the United States contained in any cargo intended for export. Such report shall include the names and addresses of the consignors and consignees, together with any facts known to the collector with reference to such shipment and particularly those which may indicate that such gold or silver coin or bullion or moneys of the United States may be intended for delivery or may be delivered, directly or indirectly, to an enemy or an ally of enemy.

SEC. 15. That the sum of $450,000 is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, to be used in the discretion of the President for the purpose of carrying out the provisions of this Act during the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for the payment of salaries of all persons employed under this Act, together with the necessary expenses for transportation, subsistence, rental of quarters in the District of Columbia, books of reference, periodicals, stationery, typewriters and exchanges thereof, miscellaneous supplies, printing to be done at the Government Printing Office, and all other necessary expenses not included in the foregoing.

SEC. 16. That whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act shall, upon conviction, be fined not more than

$10,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States.

SEC. 17. That the district courts of the United States are hereby given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this Act, with a right of appeal from the final order or decree of such court as provided in sections one hundred and twenty-eight and two hundred and thirty-eight of the Act of March third, nineteen hundred and eleven, entitled "An Act to codify, revise, and amend the laws relating to the judiciary."

SEC. 18. That the several courts of first instance in the Philippine Islands and the district court of the Canal Zone shall have jurisdiction of offenses under this Act committed within their respective districts, and concurrent jurisdiction with the district courts of the United States of offenses under this Act committed upon the high seas and of conspiracies to commit such offenses as defined by section thirty-seven of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, and the provisions of said section for the purpose of this Act are hereby extended to the Philippine Islands and to the Canal Zone.

SEC. 19. That ten days after the approval of this act and until the end of the war, it shall be unlawful for any person, firm, corporation, or association, to print, publish, or circulate, or cause to be printed, published, or circulated in any foreign language, any news item, editorial, or other printed matter, respecting the Government of the United States, or of any nation engaged in the

present war, its policies, international relations, the state or conduct of the war, or any matter relating thereto: Provided, That this section shall not apply to any print, newspaper, or publication where the publisher or distributor thereof, on or before offering the same for mailing, or in any manner distributing it to the public, has filed with the postmaster at the place of publication, in the form of an affidavit, a true and complete translation of the entire article containing such matter proposed to be published in such print, newspaper, or publication, and has caused to be printed, in plain type in the English language, at the head of each such item, editorial, or other matter, on each copy of such print, newspaper, or publication, the words "True translation filed with the postmaster at ——— on ——— (naming the postoffice where the translation was filed, and the date of filing thereof), as required by the Act of ——— (here giving the date of this Act)."

Any print, newspaper, or publication in any foreign language which does not conform to the provisions of this section is hereby declared to be nonmailable, and it shall be unlawful for any person, firm, corporation, or association, to transport, carry, or otherwise publish or distribute the same, or to transport, carry, or otherwise publish or distribute any matter which is made nonmailable by the provisions of the Act relating to espionage, approved June 15, 1917: Provided further, That upon evidence satisfactory to him that any print, newspaper, or publication, printed in a foreign language may be printed, published, and distributed free from the foregoing restrictions and conditions without detriment to the United States in the conduct of the present war, the President may cause to be issued to the printers or publishers of such print, newspaper, or publication, a permit to print, publish, and circulate the issue or issues of their print, newspaper, or publication, free from such restrictions and requirements, such permits to be subject to revocation at his discretion. And the Postmaster General shall cause copies of all such permits and revocations of permits to be furnished to the postmaster of the post office serving the place from which

the print, newspaper, or publication, granted the permit is to emanate. All matter printed, published and distributed under permits shall bear at the head thereof in plain type in the English language, the words, "Published and distributed under permit authorized by the Act of ——— (here giving date of this Act), on file at the post office of ———, (giving name of office)."

Any person who shall make an affidavit containing any false statement in connection with the translation provided for in this section shall be guilty of the crime of perjury and subject to the punishment provided therefor by Section 125 of the Act of March 4, 1909, entitled "An Act to codify, revise, and amend the penal laws of the United States," and any person, firm, corporation, or association, violating any other requirement of this section shall, on conviction thereof, be punished by a fine of not more than five hundred dollars ($500), or by imprisonment of not more than one year, or, in the discretion of the Court, may be both fined and imprisoned.

Approved: October 6, 1917.

PART III.

Report on the Trading with the Enemy Act

Submitted to the Senate August 15, 1917, by the Senate Committee on Commerce.

(*It is believed that the Senate Report, together with a memorandum of American and English cases on the law of Trading with the Enemy, will help to a fuller understanding of the Act, and of its passage through Congress*).

The Committee on Commerce, to whom was referred the bill (H. R. 4960) to define, regulate, and punish trading with the enemy, and for other purposes, having had the same under consideration, report it back with sundry amendments and recommend that the bill as amended do pass.

Your committee devoted more than a month to careful, painstaking consideration of this bill. It spent several days in giving hearings to various interested parties, and to representatives of several departments of the Government. These hearings cover more than two hundred printed pages.

A lucid report was submitted by the House Committee on Interstate and Foreign Commerce, and same is annexed hereto and made a part hereof as Appendix "A."

The purpose of this bill is to mitigate the rules of law which prohibit all intercourse between the citizens of warring nations, and to permit, under careful safeguards and restrictions, certain kinds of business to be carried on. It also provides for the care and administration of the property and property rights of enemies and their allies in this country pending the war. The spirit of the act is to permit such business intercourse as may be beneficial to citizens of this country, under rules and regulations of the Secretary of Commerce, which will

prevent our enemies and their allies from receiving any benefits therefrom until after the war closes, leaving to the courts and to future action of Congress the adjustment of rights and claims arising from such transactions. Under the old rule warring nations did not respect the property rights of their enemies, but a more enlightened opinion prevails at the present time, and it is now thought to be entirely proper to use the property of enemies without confiscating it; also to allow such business as fire insurance, issuance and use of patents, etc., to be carried on with our enemies and their allies, provided that none of the profits arising therefrom shall be sent out of this country until the war ends. The general principles governing the bill are so well stated by Assistant Attorney General Warren, of the Department of Justice (see hearing pp. 130 and 131), that we quote from him as follows:

Trade with the enemy is unlawful under the common law both in England and the United States. (See memorandum of American cases prepared by me and submitted as an appendix to my remarks.) In England it has always been a common law criminal offense (Regina *v.* Castro (1880), 5 Q. B. D., 490). In the United States, so far as such trade is criminal, it must be made so by Federal legislation, there being no common law of crimes. Such trade has a civil aspect—being unlawful, the acts of all parties engaging in such trade are void, or their rights and remedies are suspended during the war. It has also a Federal fiscal aspect, in that the United States may cause to be forfeited in the courts all property concerned in the unlawful trade. (See memorandum of law hereto attached.)

The questions of what constitutes trade with the enemy and what constitutes an enemy within the purview of the illegal trade are settled by the decisions of the English and of the American courts. These decisions constitute part of the common law of the two countries. Strictly speaking, they are not founded on international law. They are purely domestic decisions, founded on such view of public policy as the courts of each country decide to adopt, paying attention, however, to the general consensus of other countries as to what shall constitute a wise public policy in dealings affecting outside countries.

It follows that when the legislature of a country enacts a statute relative to trade with the enemy containing provisions differing from the law laid down by the courts, it is not violating or departing from international law. It is simply expressing its views as to the need of change in the domestic law of the country. Each country must decide for itself what it shall regard as unlawful trade

with the enemy, and also what persons it shall regard, for the purposes of such trade, as enemy.

Changes in economic, commercial, financial, military, naval, and political conditions may make it highly necessary that doctrines as to trade with the enemy laid down by our courts a century ago should be modified by the legislature either by making them more stringent or less stringent, according to the needs and conditions of the present day. The complexity of modern business demands far greater stringency in certain directions than the old cases decided by the courts provided for. On the other hand, the more enlightened views of the present day as to treatment of enemies make possible certain relaxations in the old law.

In former days, trade consisted wholly in the actual transfer and transport of commodities. To-day a form of trade even more helpful to the enemy consists of transfer of credits and money by letter, cable, or wireless. Hence, while formerly the mere accumulation of enemy property or funds in this country did not assist the enemy materially, so long as it remained here, now with the ready ease by which credits may be transferred and funds used it becomes just as important to prevent an enemy from building up, using, or transferring his credit or credits as from actually transferring physical property. Hence much more rigid supervision or prevention of such transactions becomes necessary.

So also, with the greater ease of intercommunication between countries, it may become necessary to expand the class of persons who, within the purview of unlawful trade with the enemy, shall be deemed "enemy." Even under the old court decisions the term "enemy" (when used in connection with trade with the enemy) was not confined to citizens of the enemy nation; it applied under certain circumstances to neutrals and their business within the enemy country, and even to our own citizens when having business or property in the enemy country. For these reasons a modern trading-with-the-enemy act must define the term "enemy" according to the particular conditions confronting each country so legislating, and likewise must on the same lines define the particular acts which it thinks necessary to forbid as unlawful trade. It was my intent in drafting this bill to make it as little restrictive of American commerce and as liberal toward the enemy private person as was compatible with the safety of the United States and with justice to American interests.

For the general scope of the present bill (H. R. 4960), I refer to a memorandum in the printed hearings before the House committee, pages 24–25, and also to the testimony of Secretary Lansing, Secretary Redfield, and myself, ibid., pages 3–16, 31–44. For previous American trade with the enemy statutes and proclamations, see printed hearings, pages 26, and United States *v.* Lane (1868), 8 Wall., 185.

The present bill is less stringent, and designedly so, than the present English act. And it is less stringent than the law of trade with the enemy as laid down by our courts, for it provides for a system of licenses by which any act or business forbidden by the bill may be licensed to be done, if the Secretary of Commerce shall be of opinion that it can be carried on or done with safety to the United States. The provisions of this bill greatly amplify and make more practical a system of license or permit which was provided for by the Government during the Civil War. The bill may in some ways interfere with the freedom of American commerce, and it may bear hardly, in places, upon individuals. By this license system, however, we provide a method of relief in individual cases where the relief can be extended without injury to the interests of the country. But it is necessary always to bear in mind that a war can not be carried on without hurting somebody, even, at times, our own citizens. The public good, however, must prevail over private gain. As was said in Bishop *v.* Jones (28 Texas, 294), there can not be "a war for arms and a peace for commerce."

One of the most important features of the bill is that which provides for the temporary taking over of enemy property, its conservation in the hands of the alien property custodian, and its investment in United States bonds. The investment feature, so far as I know, is an entirely new provision, contained in no previous statute, and in line with modern, lenient policies with reference to private property in time of war. I call attention to Secretary Redfield's characterization of this part of the bill, in the House committee hearings. He said: "I do not know who was the originator of the idea, but whoever was has created something as fine in its way as the return of the Boxer indemnity, because the enemy property is all in our hands to bear its share of our expenses in fighting the enemy, and yet it is safeguarded so that if it be the will of Congress, under urgent conditions, it may be returned to him intact and safeguarded by us during the whole period of the war."

The theory of the bill is that enemy property in this country shall not remain in the hands of the enemy's debtor or agent here; but that, if the President so directs, it shall be temporarily conscripted by the Government to finance the Government through investment in its bonds, and to be paid back to the enemy or otherwise disposed of at the end of the war as Congress shall direct. In other words, we fight the enemy with his own property during the war; but we do not permanently confiscate it. Moreover, this temporary conscription of enemy property is also conservation of enemy property; for it is taken from the hands of debtors or agents, as to whose solvency the enemy would otherwise have to assume the risks, and invested in the safest security in the world—United States bonds—or deposited in Government depositaries.

For convenience reference is herein made to the pages of the printed hearings, at which detailed explanation may be had of the various sections of the bill.

The American judicial authorities on trading with the enemy are collected in a memorandum in the Senate subcommittee hearings, pages 170–175, and are published herein with additions as Appendix B. The English judicial authorities, collected by Assistant Attorney General Warren, are published herein as Appendix C.

The bill is susceptible of division into four portions.

The first portion defines the word "enemy" and prescribes the acts which shall be forbidden and which are made criminal if performed without license.

The second portion provides for a system by which any act otherwise unlawful and criminal may be licensed by the Secretary of Commerce if compatible with the safety of the United States and the successful prosecution of the war.

The third portion deals with the conservation and utilization of enemy property during the war.

The fourth portion deals with the entirely separable question of patents.

Taking up the sections in detail:

Section 2 prescribes the classes of persons who shall be deemed within the purview of the term "enemy" for the purposes of trade during time of war and for the purposes of this act. (Hearings, pp. 133–136.)

Briefly speaking, as applied to the present situation, any person residing or doing business within Germany, and any person residing outside the United States and doing business within Germany, and any corporation incorporated within Germany or incorporated within any country (other than the United States) and doing business within Germany are termed "enemy." "Doing business within Germany," of course, means having a branch or agency actively conducting business within that country. The bill does not bring within the term "enemy" a neutral, unless such neutral has a branch of its business within Germany. Nor does the bill term "enemy" a German residing in a neutral

country and conducting no part of his business within Germany. In this respect the bill differs from the more extreme provisions of the English law, under which the English "blacklist" was set up. A German residing in the United States is not included in any way within the term "enemy" by the direct operation of the act itself. The act provides, however, that a German residing or doing business anywhere may, if the President shall find the safety of the United States or the successful prosecution of the war so requires, be, by proclamation of the President, included with the term "enemy." A corporation chartered in the United States does not come within the purview of the term "enemy," even if controlled by German stockholders; but such corporation may not transmit dividends or profits out of the United States to its German stockholders and is criminally liable, just as any other citizen of the United States may be, for engaging in an act of trade with the enemy made illegal by the act. (Hearings, p. 189.)

The term "ally of enemy" is defined along similar lines as the definition of the term "enemy."

Section 3 taken in connection with the definition of the words "to trade" in section 2, sets forth the forms of intercourse with the enemy or with the ally of enemy which are made specifically criminal. It is to be noted that this section does not purport and is not intended to be declaratory of every form of intercourse with the enemy which is unlawful at common law. The act specifically provides in section 7 (b) that it shall not be construed to recognize as valid any act which would otherwise have been void at law, unless such act is expressly authorized by the statute. In other words, the mere fact that section 3 fails to make any given form of intercourse with the enemy criminal does not make such intercourse lawful if it is unlawful under the general doctrines of law, as between private individuals and as affecting their civil rights and liabilities. (Hearings, pp. 151–158, 184.)

Any form of trade with the enemy which is made criminal by section 3 may be performed under license

from the Secretary of Commerce granted either to the person engaged in the trade or to the enemy person himself. Full provision for licenses to be issued by the Secretary of Commerce is found in section 5. Such authorization of trade under license constitutes relaxation of the rule of international law forbidding trade with the enemy. The right to license such trade, however, has always been recognized, and statutory and executive provisions were made for such licenses during the Civil War in the United States. The present bill contains much more elaborate provisions for such licenses.

Section 3 further contains provisions making it unlawful to transport Germans or their allies into or out of the United States without license from the Secretary of Commerce. The necessity for this provision is very evident.

Section 3 also makes criminal the transmission or attempted transmission out of or into the United States of letters or other tangible forms of communication except in the regular course of the mail, and also the transmission of letters and all other forms of communication intended for or to be delivered directly or indirectly to the enemy. A provision, however, is made whereby persons who desire to take matter out of the United States other than in the regular course of the mail or who desire to send letters to the enemy may accomplish their purpose, if the same shall be proper, by submitting the letters, etc., to the Secretary of Commerce or to such officer as the President may direct and obtaining his consent. At present there is no adequate law on the statute books which prevents the smuggling into or out of this country of mail matter outside of the regular mail service. The lack of any criminal statute on this subject constitutes a great source of danger to this country. (Hearings, pp. 190–192.)

Section 4 (a) contains elaborate provisions to cover the case of branches or agencies of German corporations doing business in this country—insurance, reinsurance, commercial, and otherwise (and also of German ally corporations). One of the purposes of this section is to

give the United States Government full control over all enemy and ally of enemy insurance or reinsurance companies, and to safeguard the interests of American companies which, in the past, have had business dealings with them.

These transactions have been in the nature of reinsurances. During the year 1916 the reinsurance premiums written by foreign companies, with branch offices in this country, amounted to $50,000,000. Of this total, 47 per cent went to Russian and French companies, 11 per cent to neutral companies, and the balance, or 42 per cent, to enemy countries or their allies.

Absolute control over all such companies of enemy nations (and their allies) is vested in the Secretary of Commerce, who is authorized to grant or refuse to grant all license applications emanating from said companies, or their agents, doing business in the United States.

Section 4, in conjunction with section 9. also protects and safeguards those insurance companies of the United States which have existing contracts, entered into prior to the war, with enemy reinsurance companies. The latter, under the proposed act, may be compelled to turn over to the alien-property custodian, an official created by said act, all their assets in the United States.

In such cases the American companies are enabled to replace their contracts elsewhere, those existing with enemy countries being liquidated, upon proper proof of claim, presented to the alien-property custodian, to the Treasurer of the United States, to the Secretary of Commerce, or, upon suit, to the United States courts. American branches of German corporations are given 30 days within which to apply for a license. If the license is refused, any further doing of business in this country by the German corporation will be illegal. Pending the 30 days within which application may be made, and further pending the decision of the Secretary on the question of license, insurance companies are allowed to continue to do business under the present provisions of the President's proclamation—that is, they may continue their ordinary business, but they may not transmit any funds out of

the country or allow any funds to be used as a basis for credits. A German insurance or reinsurance company may not, however, do any marine or war-risk insurance, and provision is made that the Secretary of Commerce shall not have power to license any such marine or war-risk insurance or reinsurance. (Hearings, pp. 99–111, 139–144, 147.)

As to branches of business corporations pending the 30 days and further pending the decision of the Secretary as to license, such German branches may continue to do business, but they also may not transmit or transfer any money or property out of the United States or use it for the basis of the establishment of credits. Detailed provisions are made to safeguard American interests in case the Secretary of Commerce refuses a license to a branch of a German insurance company or revokes any license after he shall have granted it. (Hearings, pp. 145–146.)

Section 4 (b) provides that no enemy and no partnership of which he was a member shall assume or use any name other than that by which he or it was ordinarily known at the beginning of the war, except under license from the Secretary of Commerce.

Section 5 gives the President the power to suspend the provisions of the act in so far as they apply to an ally of enemy, if he shall find it compatible with the interests of this country. The Secretary of Commerce is given power to issue licenses, and by section 5 (b) is further authorized to order the suspension for not more than 30 days of any transaction which he has reason to believe is an enemy transaction, pending investigation by him. (Hearings, pp. 159, 186.)

In order to prevent any conflict between the powers of the Secretary of the Treasury and those of the Secretary of Commerce relative to banks, it is provided in section 5 (b) that any investigation of a bank shall be made through the Secretary of the Treasury, or the Federal Reserve Board, or with the concurrence of the Secretary of the Treasury, and he must also concur in any licenses issued relative to the export of gold or silver coin or bullion. (Hearings, pp. 113–130, 194, 221.)

By section 5 (c) the Secretary of the Treasury is given broad power to investigate any transactions in foreign exchange, gold or silver exports,and transfers of foreign credits (hearings, pp. 113, 130, 194, 221), and whenever it shall appear to the Secretary of the Treasury that the export of any gold or silver coin, or bullion, or of any moneys of the United States may result in violation of the provisions of this act, he may withhold such export for a period of not exceeding 90 days pending investigation by him.

Section 6 provides for the general administration of the bill by the Secretary of Commerce and for the appointment of a new official known as the alien property custodian, who shall have charge of all money or property belonging to an enemy or ally of enemy which may be paid or conveyed to him under the provisions of the bill.

The bill next provides for the power of the Government to deal with enemy property so as to conserve and utilize such property found within its jurisdiction so far as practicable, both in the interests of this Government and of the enemy owner. The general provision is made that the Government may require any form of enemy property found within the United States to be paid or conveyed to the alien property custodian, and any person holding enemy property in this country is given the option, with the consent of the Secretary of Commerce, to transfer such property into the hands of the Government.

The most novel and important feature of this portion of the bill is the requirement that all money and quick assets paid over to the Government shall be invested in United States bonds. So far as known this is an entirely new provision, contained in no previous statute. It is in line, however, with the modern and advanced lenient policy with reference to private property in time of war. By this means, enemy property is temporarily conscripted by the Government to finance the Government through investment in these bonds, and to be paid back to the enemy or otherwise disposed of at the end of the war, as Congress shall direct. In other words, we fight

the enemy with his own property during the war but we do not permanently confiscate it. This temporary conscription of enemy property is also conservation of enemy property, for it takes the property from the hands of debtors or agents, as to whose solvency the enemy would otherwise be obliged to assume the risk, and it invests the property in the safest security in the world —bonds of the United States—or deposits it in Government depositories.

Section 7 contains provisions for ascertainment as to enemy property in this country.

Section 7 (a) requires reports from corporations and associations of enemy officers, directors and stockholders. As, however, it is known that much enemy property was transferred after the severing of relations with Germany and prior to the beginning of the war, provision is made that the Secretary of Commerce may require lists of all stock which was owned on February 3, 1917, by any person now defined as an enemy or ally of enemy. This provision is highly necessary in order that investigation may be made as to the bonafide character of these transfers. As to any actual and legal transfer, of course the bill would have no retrospective action. This provision is merely for the purpose of obtaining information.

Further provision is made that any person in this country who holds property belonging to or for an enemy or who owes any debt to an enemy shall report the same to the Secretary of Commerce, and there is a similar provision for a report of money or property held or debt owed on February 3, 1917. (Hearings, pp. 153–157.)

Section 7 (b) contains a provision whereby nothing in this act shall be deemed to render valid any act or transaction constituting trade with or for an enemy performed or engaged in since the beginning of the war and prior to the passage of the act which would have otherwise been void or illegal at law. (Hearings, pp. 157–158, 184.)

In order to prevent evasion of the act by assignments of enemy interests to neutrals, to be collected for the benefit of the enemy, it is provided that no person shall

acquire any right or remedy by virtue of any such assignment or conveyance made after the passage of the act, or, unless such assignment or conveyance is made under license as provided in the act. Safeguard is given to American citizens who may have acquired interests under contracts assigned prior to the passage of the act, so that such contracts may be carried out and completed if there is no actual interest of the enemy remaining in such contract. (Hearings, p. 184.)

Provision is also made for payment to American citizens out of German funds in this country where the funds were received prior to the war and the necessity for payment arises out of transactions entered into prior to the war, but such payments are to be made only with the license of the Secretary of Commerce. (Hearings, pp. 47–72.)

Section 7 (c) provides that the Secretary of Commerce may, by direction of the President, require any enemy property to be paid to the alien property custodian.

Section 7 (d) authorizes any person holding property for an enemy or owing money or property to an enemy to pay or convey the same, at his option, with the consent of the Secretary of Commerce, to the alien property custodian. (Hearings, pp. 158–159.)

Section 7 (e) contains provisions giving protection to any person who may have performed any act in pursuance of an order, rule, or regulation made by the Secretary of Commerce, and provides also for acquittances and discharges to any such person paying or conveying property to the alien property custodian.

Section 8 (a) contains provision by which American citizens holding security on enemy property may dispose of such security on notice, presentation, or demand served by him on the alien property custodian, with the same force and effect as if duly served on the enemy personally.

Similarly, American citizens who have contracts with the enemy terminable on notice or presentation or demand may terminate such contracts by such notice,

presentation, or demand served on the alien property custodian. (Hearings, pp. 160–161, 185–186.)

Section 8 (b) protects American citizens who may have entered into contracts for the delivery of goods after the ending of the European War and who now find themselves subject to conditions which were not contemplated when they entered into the contracts, namely, the entry of the United States into the war. It is provided that such contracts may be abrogated by notice served on the alien property custodian. (Hearings, pp. 161–165, 178–183.)

Section 8 (c) provides that the statute of limitations shall be suspended on any contract entered into prior to the beginning of the war between a citizen of the United States and a neutral whereby the United States citizen has become liable for the payment of money which is evidenced by an obligation secured by funds or property situated in an enemy country.

Section 9 protects American citizens who have any claim or interest, right or title in or to any money or property which has been paid or conveyed to the alien property custodian. This section is necessary to preserve and protect innocent claimants, notwithstanding the enforced absence of the parties in interest. If the enemy and all other parties claiming interest in his property assent, the Secretary of Commerce may order the property returned or paid over or transferred to the claimant. (Hearings, pp. 148–151.)

If such assent is not obtained, then adequate provision is made for a suit in equity. Such a suit may be instituted at any time before the expiration of six months after the end of the war.

Section 10 relates solely to patents which are placed under control and supervision of the Federal Trade Commission. This section is fully explained in subdivision 111 of the House report, to which reference is made. Two material amendments were added by the Senate committee, one authorizing the Federal Trade Commission to fix prices when licenses are granted to use a patent, trade-mark, print, label, or copyright, and the other

authorizing the Commissioner of Patents to enforce secrecy in regard to any invention which may, in his opinion, be detrimental to the public safety or defense.

Section 11 contains provisions for the preservation of enemy property by governmental agency and in the interest of the enemy himself. The chances of trade in time of war may involve the solvency of debtors or holders of enemy property, but the taking over and custody of the property by the Government gives to the enemy the best possible protection. Not only is the enemy property preserved and protected, but provision is made for its utilization in the interest of this Government. Moneys (including checks and drafts payable on demand) held by the alien property custodian are required to be deposited immediately by him with the Treasurer of the United States, and may be thereupon invested or reinvested by the Secretary of the Treasury in the bonds or certificates of the United States under appropriate rules and regulations. Thereby the enemy property may be utilized to support and promote the success of the war. This investment and reinvestment is not only sound business policy but a just method of auxiliary warfare.

As there may be paid or conveyed to the alien property custodian, in addition to moneys, checks, and drafts payable on demand, much other property, such as stocks, bonds, tangible personal property and otherwise, provision is made vesting the alien property custodian with the power of a common-law trustee in respect to all property, other than money, so that he may be enabled to manage such property and exercise any rights which might be appurtenant thereto. (Hearings, pp. 70–72, 167.) In case of sale, however, of any such property, the proceeds are required to be paid to the Treasurer of the United States.

In order to simplify governmental bookkeeping, provision is made that any money or property required to be paid or conveyed to the alien property custodian shall, on his written order, be so paid or conveyed direct to the Treasurer of the United States.

While the theory on which the bill is drafted is that enemy property shall be protected and utilized, but not confiscated, the ultimate disposition of the enemy property received and held by the Government is left entirely to Congress, and provision is made that after the end of the war enemy claims to such property "shall be settled as Congress shall direct."

Sections 12 and 13 relate to the regulation of clearance of vessels bound for foreign ports, in order that adequate machinery may be provided for the prevention of departure of such vessels in case of cargoes shipped in violation of the provisions of the act.

Section 14 contains appropriations of $350,000 for the Secretary of Commerce, $50,000 for the Federal Trade Commission, and $50,000 for the Secretary of the Treasury, to be expended for the purpose of carrying out the provisions of the act.

Section 15 provides penalties for the violation of the provisions of the act or any license, rule, or regulation issued thereunder or for failure to comply with any order issued thereunder.

Sections 16 and 17 vest jurisdiction in appropriate courts for carrying out the provisions of the act.

APPENDIX A.

(Appendix A consisted of the House report, but in view of the many changes that have been made in the Bill since it was first reported to the House, it is not deemed advisable to reprint the House report here, the Senate report fully covering the situation).

APPENDIX B.

MEMORANDUM OF AMERICAN CASES AND RECENT ENGLISH CASES ON THE LAW OF TRADING WITH THE ENEMY.

By CHARLES WARREN, Assistant Attorney General of the United States.

I.

AMERICAN CASES.

(1) *Every species of intercourse with the enemy is illegal. The prohibition is not limited to mere commercial intercourse.*

Johnson, J., in *The Rapid* (1814) (8 Cranch, 155, 162, 163):

"Whether this was a trading in the eye of the prize law such as will subject the property to capture.

"The force of the argument on this point depends upon the terms made use of. If by *trading* in prize law was meant that signification of the term which consists in negotiation or contract, this case would certainly not come under the penalties of the rule. But the object, policy, and spirit of the rule is to cut off all communication or actual locomotive intercourse between individuals of the belligerent States. Negotiation or contract has therefore no necessary connection with the offense. *Intercourse* inconsistent with actual *hostility* is the offense against which the operation of the rule is directed, and by substituting this definition for that of *trading with an enemy* an answer is given to this argument."

And see especially Story, J., in *The Julia* (1814) (8 Cranch, 181, 193, 194, 195):

"Nor is there any difference between direct intercourse between the enemy countries and an intercourse through the medium of a neutral port. The latter is as strictly prohibited as the former."

See also Story, J., in *The Julia* (1813) (1 Gallison, 594, 602, 603):

"* * * It would seem a necessary result of a state of war to suspend all negotiations and intercourse between the subjects of the belligerent nations. By the war every subject is placed in hostility to the adverse party. He is bound by every effort of his own to assist his own government and to counteract the measures of its enemy. Every aid, therefore, by personal communication or by other intercourse which shall take off the pressure of the war or foster the resources or increase the comforts of the public enemy, is strictly inhibited. No contract is considered as valid between enemies, at least so far as to give them a remedy in the courts of either government, and they have, in the language of the civil law, no ability to sustain a *persona standi in judicio.* The ground upon which a trading with the enemy is prohibited is not the criminal intentions of the parties engaged in it or in the direct and immediate injury to the State. The principle is extracted for a more enlarged policy, which looks to the general interests of the Nation, which may be sacrificed under the temptation of unlimited intercourse or sold by the cupidity of corrupted avarice."

See also *The St. Lawrence* (1814) (8 Cranch, 434); *The Alexander* (1814) (8 Cranch, 169); *The Rugen* (1816) (1 Wheaton, 62); United States *v.* Barber (1815) (9 Cranch, 243); United States *v.* Sheldon (1817) (2 Wheaton, 119).

Story, J., in *The Liverpool Packet* (1813) (1 Gallison, 512, 521, 522):

"I look back upon that decision (*The Julia*) without regret, and after much subsequent reflection can not doubt that it has a perfect foundation in the principles of public law. To the many authorities there stated I might have added the pointed language of Sir W. Scott, in the *Jonge Pieter* (4 Rob., 79), that 'without the license of the government *no communication, direct or indirect,* can be carried on with the enemy,' and the rule strongly illustrative of the principle, which is acknowledged as early as the yearbooks and has received sanction down to the present times, that every contract and engagement

made with the enemy pending war is utterly void."

The Lord Wellington (1814) (2 Gallison, 102).

The case of United States *v.* Barker (1820, Circ. Ct. N. Y.) (1 Paine, 156), constitutes a departure from the general rule.

The rigid rule was reaffirmed in Scholefield *v.* Eichelberger (1883) (7 Pet., 586, 593):

"The doctrine is not at this day to be questioned; that during a state of hostility the citizens of the hostile States are incapable of contracting with each other. For near 20 years this has been acknowledged as the settled doctrine of this court, and in a case which proves it to be a rule of very general and rigid application (*The Rapid*). * * * The question has never yet been examined whether a contract for necessaries, or even for money to enable the individual to get home, would not be enforced, and analogies familiar to the law as well as the influence of the general rule in international law, that the severities of war are to be diminished by all safe and practical means, might be appealed to in support of such an exception. But at present it may be safely affirmed that there is no recognized exception but permission of a State to its own citizen, which is also implied in any treaty stipulation to that effect entered into by the belligerents."

The Jecker *v.* Montgomery (1855) (18 How., 110, 112, 119):

"The consequence of this state of hostility is that all intercourse and communication between them is unlawful. * * *

"We have seen, by the authorities cited, that *intercourse with the enemy is sufficient cause for personal punishment and for the confiscation of property; that it is a cause originating in and inflexibly enforced by necessity for guarding the public safety.*"

(2) *Property engaged in illegal intercourse with the enemy is deemed enemy property and is liable to forfeiture.*

The Sally (1814) (8 Cr., 382, 384):

"By the general law of prize, property engaged in

an illegal intercourse with the enemy is deemed enemy property. It is of no consequence whether it belongs to an ally or to a citizen; the illegal traffic stamps it with the hostile character, and attaches to it all the penal consequences of enemy ownership."

The Rapid (1814) (8 Cr., 155, 162, 163):

"The law of prize is part of the law of nations. In it a hostile character is attached to trade, independently of the character of the trader who pursues or directs it. Condemnation to the use of the captor is equally the fate of the property of the belligerent and of the property found engaged in antineutral trade. But a citizen or ally may be engaged in a hostile trade, and thereby involve his property in the fate of those in whose cause he embarks.

"This liability of the property of a citizen to condemnation as prize of war may be likewise accounted for under other considerations. Everything that issues from a hostile country is, *prima facie*, the property of the enemy, and it is incumbent upon the claimant to support the negative of the proposition. But if the claimant be a citizen or an ally at the same time that he makes out his interest, he confesses the commission of an offense which, under a well-known rule of the civil law, deprives him of his right to prosecute his claim. * * *

"Whether, on the breaking out of a war, the citizen has a right to remove to his own country with his property is a question which we conceive does not arise in this case. This claimant certainly has not a right to leave the United States for the purpose of bringing home his property from an enemy country; much less could he claim it as a right to bring into this country goods the importation of which was expressly prohibited."

See also *The Diana* (1814) (2 Gallison, 93, 97); Jecker *v.* Montgomery (1855) (18 How., 110, 114); *The Adula* (1899) (176 U. S., 361, 379), and cases cited.

The Benito Estenger (1900) (176 U. S., 568, 571):

"By the law of prize, property engaged in any illegal intercourse with the enemy is deemed enemy property, whether belonging to an ally or a citizen, as the illega

traffic stamps it with the hostile character and attaches to it all the penal consequences."

See also *The Carlos F. Roses* (1900) (177 U. S., 655).

Betts, J., in *The Crenshaw* (1861), Blatchford's Prize Cases, 27:

"Not only is property taken trading with the enemy liable to forfeiture, but it is subject to forfeiture as a prize of war."

Nelson, J., in Charge to Grand Jury (1861) (5 Blatchf., 549; Fed. Cases No. 18271):

"Trade with the enemy * * * according to the law of nations is forbidden and the property engaged in it is liable to forfeiture."

Betts, J., in *The Shark* (1862) (Blatchford's Prize Cases, p. 218).

(3) *All persons doing business with the enemy, whether citizens of the United States or citizens of the other belligerent nation or neutrals, are as to their property to be deemed enemies.*

Prize Cases (1862) (2 Black, 674):

"But in defining the meaning of the term 'enemies' property,' we will be led into error if we refer to Fleta and Lord Coke for their definition of the word 'enemy.' It is a technical phrase peculiar to prize courts, and depends upon principles of public policy as distinguished from the common law.

"Whether property be liable to capture as 'enemies' property' does not in any manner depend on the personal allegiance of the owner. 'It is the illegal traffic that stamps it "as enemies' property." It is of no consequence whether it belongs to an ally or a citizen. (8 Cr., 384.) The owner, *pro hac vice*, is an enemy.' (3 Wash. C. C. R., 183.)

"The produce of the soil of the hostile territory, as well as other property engaged in the commerce of the hostile power, as the source of its wealth and strength, are always regarded as legitimate prize, without regard to the domicile of the owner, and much more so if he reside and trade within their territory."

The Flying Scud (1867) (6 Wall., 263, 266):

"Although they are Mexican citizens, yet being established in business in the enemies' country, must be regarded according to settled principles of prize law, as enemies, and their cotton as enemies' property."

See Juragua Iron Co. *v.* United States (1909) (212 U. S., 297, 305, 306):

"Cuba, being a part of Spain, was enemy's country, and all persons, whatever their nationality, who resided there were, pending such war, to be deemed enemies of the United States and of all its people. The plaintiff, though an American corporation, doing business in Cuba, was, during the war with Spain, to be deemed an enemy to the United States with respect to its property found and then used in that country, and such property could be regarded as enemy's property, liable to be seized and confiscated by the United States in the progress of the war then being prosecuted."

So in Young *v.* United States (1877) (97 U. S., 39, 60):

"All property within enemy territory is in law enemy property just as all persons in the same territory are enemies."

30 Hogsheads of Sugar *v.* Boyle (1815) (9 Cranch, 191).

The Sarah Starr (1861) (Blatchford's Prize Cases, 74, 76):

"* * * Loyal citizens or neutrals who * * * have a mercantile domicile in an enemy country are regarded in the prize courts in their commercial dealings and transactions there as enemies in relation to vessels and cargoes owned by them and captured at sea. * * *

"The American authorities are equally explicit that a neutral, even enjoying the privilege of consul, domiciled and trading in a belligerent country, is, in war, deemed a belligerent, and his acts are clothed with the character of one of its subjects; and he can neither hold title to property acquired in such country during war, nor confer it upon others, against the interests imparted, by capture at sea, to adversary belligerents."

The Mary Clinton (1863) (Blatchford's Prize Cases, p. 560).

See also *The Venus* (1814) (8 Cranch, 253); *The Vowles* (1814) (ibid., 348); *The Frances* (1814) (ibid., 351); Livingston *v.* Maryland Ins. Co., (1813) (7 Cranch, 542); U. S. *v.* Guillem (1859) (11 How., 50); *The William Bagaley* (1866) (5 Wall., 377); Miller *v.* U. S. (1870) (11 Wall., 268).

(4) *In general, during war, contracts with, or powers of attorney or agency from, the enemy executed after outbreak of war are illegal and void; contracts entered into with the enemy prior to the war are either suspended or are absolutely terminated; partnerships with an enemy are dissolved; powers of attorney from the enemy, with certain exceptions, lapse; payments to the enemy (except to agents in the United States appointed prior to the war and confirmed since the war) are illegal and void; all rights of an enemy to sue in the courts are suspended.*

The William Bagaley (1866) (5 Wall., 377, 405, 407):

"Public war duly declared or recognized as such by the lawmaking power, imports a prohibition by the sovereign to the subjects or citizens of all commercial intercourse and correspondence with citizens or persons domiciled in the enemy country."

Hanger *v.* Abbott (1867) (6 Wall., 532, 535):

"War, when duly declared or recognized as such by the war-making power, imports a prohibition to the subjects or citizens of all commercial intercourse and correspondence with citizens or persons domiciled in the enemy country. Upon this principle of public law it is the established rule in all commercial nations that trading with the enemy, except under a Government license, subjects the property to confiscation or to capture and condemnation.

"Partnership with a foreigner is dissolved by the same event which makes him an alien enemy. * * * Direct consequence of the rule as established in those cases is that as soon as war is commenced all trading, negotiation, communication, and intercourse between the citizens of one of the belligerents with those of the other

without the permission of the Government is unlawful. No valid contract, therefore, can be made, nor can any promise arise by implication of law, from any transaction with an enemy. Exceptions to the rule are not admitted; and even after the war has terminated the defendant, in an action founded upon a contract made in violation of that prohibition, may set up the illegality of the transaction as a defense. Various attempts, says Mr. Wheaton, have been made to evade the operation of the rule and to escape its penalties, but they have all been defeated by its inflexible rigor."

Coppell *v.* Hall (1868) (7 Wall., 542, 554, 557, 558):

"When international wars exist all commerce between the countries of the belligerents, unless permitted, is contrary to public policy, and all contracts growing out of such commerce are illegal. Such wars are regarded not as wars of the governments only, but of all the inhabitants of their respective countries. The sovereign may license trade, but in so far as it is done it is a suspension of war and a return to the condition of peace. It is said there can not be, at the same time, war for arms and peace for commerce. The sanction of the sovereign is indispensable for trade. A state of war *ipso facto* forbids it. The government only can relax the rigor of the rule. * * *

"The payment of money by a subject of one of the belligerents, in the country of another, is condemned, and all contracts and securities looking to that end are illegal and void. * * *

"In Griswold *v.* Waddington (16 Johnson, 459, 460), Kent, C. J., said: 'The law had put the sting of disability into every kind of voluntary communication and contract with an enemy which is made without the special permission of the Government. There is wisdom and policy, patriotism and safety in this principle, and every relaxation of it tends to corrupt the allegiance of the subject and to prolong the calamities of war.'"

Miller *v.* United States (1870) (11 Wall., 268, 305, 306):

"It is immaterial to it whether the owner be an alien or a friend, or even a citizen or subject of the power that attempts to appropriate the property. In either case the property may be liable to confiscation under the rules of war. It is certainly enough to warrant the exercise of this belligerent right that the owner be a resident of the enemy's country, no matter what his nationality. The whole doctrine of confiscation is built upon the foundation that it is an instrument of coercion, which, by depriving an enemy of property within reach of his power, whether within his territory or without it, impairs his ability to resist the confiscating government, while at the same time it furnishes to that government means for carrying on the war. Hence any property which the enemy can use, either by actual appropriation or by the exercise of control over its owner, or which the adherents of the enemy have the power of devoting to the enemy's use, is a proper subject of confiscation."

United States *v.* Lapene (1873) (17 Wall., 601, 602):

"All commercial contracts with the subjects or in the territory of the enemy, whether made directly by one in person or indirectly through an agent who is neutral, are illegal and void * * *. No property passes and no rights are acquired under such contracts."

And see also Mrs. Alexander's Cotton (1864) (2 Wall., 404); The Ouachita Cotton (1867) (1 Wall., 521); United States *v.* Lane (1868) (8 Wall., 185, 195); Dean *v.* Nelson (1869) (10 Wall., 158); Lasere *v.* Rochereau (1873) (17 Wall., 437); Day *v.* Micou (1873) (18 Wall., 156); Mitchell *v.* United States (1874) (21 Wall., 350); Fretz *v.* Stover (1874) (22 Wall., 198); Mathews *v.* McStea (1870) (91 U. S., 7, 9, 10); Desmare *v.* United States (1876) (93 U. S., 605, 612); Pike *v.* Wassell (1876) (94 U. S., 711); Conrad *v.* Waples (1877) (96 U. S., 279, 286); Burbank *v.* Conrad (1877) (96 U. S., 291); United States *v.* Pacific R. R. (1887) (120 U. S., 227, 233); Briggs *v.* United States (1892) (143 U. S., 346, 353); Nelson, J., dissenting in Prize Cases (1862) (2 Black, 635, 687).

See also Kershaw *v.* Kelsey (1868) (100 Mass., 561,

672); Trotter on Contract During War; Page on War and Alien Enemies.

(5) *Effect of war on contracts previously entered into with the enemy.*

Hanger *v.* Abbott (1867) (6 Wall., 532, 536):

"Executory contracts also with an alien enemy, or even with a neutral, if they can not be performed except in the way of commercial intercourse with the enemy, are dissolved by the declaration of war, which operates for that purpose with a force equivalent to an act of Congress.

"In former times the right to confiscate debts was admitted as an acknowledged doctrine of the law of nations, and in strictness it may still be said to exist, but it may well be considered as a naked and impolitic right, condemned by the enlightened conscience and judgment of modern times. Better opinion is that executed contracts, such as the debt in this case, although existing prior to the war, are not annulled or extinguished, but the remedy is only suspended, which is a necessary conclusion, on account of the inability of an alien enemy to sue or to sustain, in the language of the civilians, *a persona standi in judicio.*"

What contracts are merely suspended and what are terminated by a state of war is considered in New York Ins. Co. *v.* Statham (1876) (93 U. S., 24, 31, 32, 33, 35):

"The case, therefore, is one in which time is material and of the essence of the contract. * * *

"But the court below bases its decision on the assumption that, when performance of the condition becomes illegal in consequence of the prevalence of public war, it is excused, and forfeiture does not ensue. It supposes the contract to have been suspended during the war, and to have revived with all its force when the war ended. Such a suspension and revival do take place in the case of ordinary debts. But have they ever been known to take place in the case of executory contracts in which time is material? * * *

"The truth is that the doctrine of the revival of contracts suspended during the war is one based on con-

siderations of equity and justice, and can not be invoked to revive a contract which it would be unjust or inequitable to revive.

"In the case of life insurance, besides the materiality of time in the performance of the contract, another strong reason exists why the policy should not be revived. The parties do not stand on equal ground in reference to such a revival. It would operate most unjustly against the company. * * *

"We are of opinion, therefore, that an action can not be maintained for the amount assured on a policy of life insurance forfeited, like those in question, by nonpayment of the premium, even though the payment was prevented by the existence of the war. * * *

"* * * Failure being caused by a public war, without the fault of the assured, they are entitled *ex aequto et bono* to recover the equitable value of the policies with interest from the close of the war."

The William Bagaley (1866) (5 Wall., 377, 407):

"* * * Executory contracts with an alien enemy, or even with a neutral, if they can not be performed except in the way of commercial intercourse with the enemy, are *ipso facto* dissolved by the declaration of war, which operates to that end and for that purpose with a force equivalent to that of an act of Congress."

See also Gates *v.* Goodloe (1879) (101 U. S., 612, 619–621); Lamar *v.* Micou (1884) (112 U. S., 452, 464); United States *v.* Dietrich (1908) (126 Fed., 671, 674).

See also Griswold *v.* Waddington (1819) (10 Johns, 438); Abell *v.* Insurance Co. (1881) (18 W. Va., 406, 438); Moore's International Law Digest, volume 10, page 244.

(6) *As to the effect of war on payment of interest.*

See Trotter on Contract During War (supplement), p. 61; Trotter on Contract During War, p. 49.

See also Brown *v.* Hiatts (1872) (15 Wall., 177, 185); Hoare *v.* Allen (1789) (2 Dallas, 102); Foxcroft *v.* Nagle (1791) (2 Dallas, 182); Conn. *v.* Penn. (1818) (1 Peters C. C., 496, 524); Ward *v.* Smith (1868) (7 Wall., 447, 452); Moore, Dig. Int. Law (vol. 7, p. 252).

See also statement in 22 Cyc., 1562, and 30 American and English Ency. Law (2d ed.), p. 8. (The statements contained in these last two references do not seem to be in entire accord with the Supreme Court decisions.)

(7) *As to the effect of war on payment to agents of the enemy, and upon appointment of agents, and upon acts performed under power of attorney granted by the enemy prior to war.*

Conn. *v.* Penn. (1818, Circ. Ct. Penn.) (1 Peters C. C. 496, 527, 528); United States *v.* Grossmeyer (1869) (9 Wall., 72, 73); Ward *v.* Smith (1868) (7 Wall., 447); University *v.* Finch (1873) (18 Wall., 106); Insurance Co. *v.* Davis (1877) (95 U. S., 425, 429); Williams *v.* Paine (1897) (169 U. S., 55, 70, 71).

(8) *As to the power to sue in the courts.*

See Hanger *v.* Abbott (1867) (6 Wall., 532, 536, 542); Caperton *v.* Bowyer (1871) (14 Wall., 216, 236); Masterson *v.* Howard (1873) (18 Wall., 99, 105).

An alien enemy may be sued in the courts of the United States, though he has no right to sue. McVeigh *v.* United States (1870) (11 Wall., 259); University *v.* Finch (1873) (18 Wall., 106, 111).

(9) *As to power of the government to license trade with the enemy.*

See especially United States *v.* Lane (1868) (8 Wall., 185, 195); Hamilton *v.* Dillin (1874) (21 Wall., 73, 97):

"* * * The power of the Government to impose such conditions upon commercial intercourse with an enemy in time of war as it sees fit is undoubted. It is a power which every other government in the world claims and exercises and which belongs to the Government of the United States as incident to the power to declare war and to carry it to a successful termination."

(10) *As to effect of war on statutes of limitation.*

See Stewart *v.* Kahn (1870) (11 Wall., 493); United States *v.* Wiley (1870) (11 Wall., 508); The Protector (1869) (9 Wall., 687); Hanger *v.* Abbott (1867) (6 Wall., 532).

(11) *As to rights of alien enemies resident in the United States.*

See Clarke *v.* Morey (1813) (10 Johns, 69); Seymour *v.* Bailey (1872) (66 Ill., 288); Princess *v.* Moffett (1914) (W. N., 379); Volkil *v.* Governors (1914) (2 I. R., 542); Forrestier *v.* Bordman (1839) (1 Story, 43); Hallet *v.* Jenks (1805) (3 Cranch, 210); Brown *v.* United States (1814) (8 Cranch, 110); Case of Fries (1799) (9 Fed. Cases No. 5126, pp. 830–832); Lockington *v.* Smith (1819) (1 Peters Circ. Ct., 466, 472); In re Lockington, Brightly, N. Dak. (Pa.), 269; Revised Statutes, sections 4067–4070; President's Proclamation of April 6, 1917, as to alien enemies.

II.

ENGLISH CASES DURING THE PRESENT EUROPEAN WAR.

A. *How far under the English law English corporations controlled by German stockholders are to be regarded as enemy.*

Amorduct Manufacturing Co. *v.* Debries & Co. (84 L. J. (K. B.) 586; 112 L. T. 131; 31 T. L. R. 69; 59 S. J. 91); Rubber Co. *v.* Daimler Co. (C. A. (1915) 1 K. B. 893; 84 L. J. K. B. 926; 20 Com. Cas. 209; (1915) W. N. 44; 59 S. J. 232); Daimler Co. *v.* The Continental Tyre & Rubber Co. (H. L. (E) (1916) 2 A. C. 307; 85 L. J. (K. B.) 1333; 114 L. T. 1049; (1916) W. N. 269; 22 Com. Cas. 32; 32 T. L. R. 624; 60 S. J. 602); In re Hilches Ex parte Muhesa Rubber Plantations (Ltd.) (C. A. (1917) 1 K. B. 48; 86 L. J. (K. B.) 204; (1916) H. B. R. 160; 115 L. T. 490; 33 T. L. R. 28). See also Societe Anonyme Belge des Mines d' Aljustrel *v.* Anglo-Belgian Agency (July 30, 1915) (31 T. L. R. 624).

B. *What constitutes trading with the enemy?*

Moss *v.* Donohoe (J. C. 32 T. L. R. 343). It is trading with the enemy to order from an American company with a branch in Rotterdam gin which the defendant

knew was sent by such branch to Hamburg, Germany, for bottling.

The Panariellos (85 L. J. (P.) 112; 114 L. T. 670; 32 T. L. R. 459; 60 S. J. 427). A British subject dispatched goods after the outbreak of war and with knowledge of it from a foreign port for delivery as directed by an enemy firm and for their benefit.

Held, that this constituted trading with the enemy and the goods were forfeit.

Stephen M. Weld & Co. *v.* Fruhling Goshen (1916) (W. N. 187; 32 T. L. R. 469). The plaintiffs were partners in a German firm and a draft for a part of the profits of the German firm was drawn and accepted before war began by the defendants. The draft was paid over to the plaintiffs, an American firm, after war was declared and the defendants refused payment.

Judgment for the defendants, it being a transfer on behalf of an enemy.

In re Aramayo Francke Mines (Ltd.) (C. A. (1917) 1 Ch. 451; 86 L. J. (Ch.) 225; 116 L. T. 54; (1917) W. N. 36; 33 T. L. R. 176). When a corporation incorporated in England and doing business in Bolivia for the benefit of the allies attempts, in order to avoid taxes, to transfer the assets to a corporation incorporated in Switzerland, the court held that an order should be made appointing a controller under the trading with the enemy act to prohibit that action.

C. *What constitutes trading for the benefit of the enemy?*

Rex *v.* Kupfer (1915) (2 K. B. 321). Kupfer in England made payments to an English bank to be transmitted to a Dutch house to which it was proved Kupfer had been indebted before the war.

Held, this was a payment for the benefit of the enemy.

D. *Trading with branches of enemy concerns in allied territory.*

Wolf *v.* Carr, Parker & Co. (Apr. 29, 1915) (31 T. L. R. 407).

E. *Contracts of insurance.*

W. L. Ingle *v.* Mannheim Insurance Co., (1915) (1 K. B. 227; 84 L. J. (K. B.) 491; 112 L. T. 510). A suit may be maintained against a branch of an alien enemy insurance company situated in England on a policy issued before the war. The loss occurred subsequently and a claim to recover such a loss is not a "transaction with the enemy."

F. *Appointment of a custodian and distribution of the assets and details of administration under the peculiar provisions of the English trading with the enemy act.*

Stevenson & Sons (Ltd.) *v.* Aktiengesellschaft (C. A. 115 L. T. 594; 33 T. L. R. 84; C. A. (1917) 1 K. B. 842; 32 T. L. R. 84; 61 S. J. 146). The plaintiffs, an English company, were, at the outbreak of the war between England and Germany, sole agents in England for the defendants, a German company. There was also a partnership relation between the two.

Held, that both agency and partnership were terminated at the outbreak of war, and that the determination as to what should be done with that portion of the plaintiff's assets which should belong to the German partners was one for Parliament to determine.

On appeal, held, that lower court was right in regard to the agency and partnership and that the enemy partner was entitled to a share of the profits made after the dissolution by the English corporation carrying on the business with the aid of the enemy partners' capital.

In re Kastner & Co., Auto-Piano Co. *v.* Kastner & Co. (1917) (1 Ch., 390; 86 L. J. (Ch.), 235; 116 L. T., 62; (1917) W. N., 15; 33 T. L. R., 149.) Schmidtz *v.* Van der Veen & Co. (84 L. J. (K. B.), 861; 112 L. T., 991; 31 T. L. R., 214.) In re W. Hagelberg Aktiengesellschaft (1916), 2 Ch., 503; (1916) W. N., 335. In re Fried Krupp Aktien-Gesellschaft, (1916) 2 Ch., 194; 114 L. T., 1026; (1916) W. N., 234; 32 T. L. R., 553; (1917) W. N., 171.

(*a*) *Right of a custodian of a corporation to vote the shares.*

In re R. Pharaon et Fils, C. A.; (1916) 1 Ch.,1; 85 L. J. (Ch.), 68; (1915) H. B. R., 232; 113 L. T., 1138; (1915) W. N., 340; 32 T. L. R., 47.

A custodian in whom are vested shares in an English company, formerly belonging to an enemy, may vote the shares as if he was himself the stockholder.

(*b*) *Right of alien enemy to vote his shares.*

Robson *v.* Premier Oil & Pipe Line Co., C. A. (1915), 2 Ch. 124; 84 L. J. (Ch.), 629; 118 L. T., 523.

G. *During a state of war an alien enemy may not vote shares held in English company, but right of voting is suspended until after war.*

(*a*) *Right of alien enemy to sue and be sued.*

Mercedes Daimler Motor Co. *v.* Maudsley Motor Co. (32 R. P. C. 149; (1915) W. N. 54; 31 T. L. R. 178).

Two companies sued as coplaintiffs for patent infringement. Agreement between them provided British company had sole right to sue for infringement and could join alien enemy as coplaintiff on certain notice.

Held, will of the alien enemy not relevant, and British company had right to sue alone.

Turn & Taxis *v.* Moffett (1915) (1 Ch. 58; 84 L. J. (Ch.) 220; 112 L. T. 114).

An alien enemy's wife residing and duly registered in England may sue upon her individual rights.

Halsey et al. *v.* Lowenfeld (1915) (W. N. 400; 32 T. L. R. 1).

Held, that an action might be brought against an alien enemy on a lease for rent occurring after commencement of war.

Vokl *v.* Governors (1914) (2 L. R. 543); Porter *v.* Friendenberg et al., C. A. (1915) (1 K. B. 857; 84 L. J. K. B. 1001; 20 Com. Cas. 189).

Alien enemy can not sue unless within the realm by license of the King. He may be sued in the King's courts.

J. B. Rombach Baden Clock Co. *v.* Gent & Son (84 L. J. (K. B.), 1558; 31 T. L. R., 492).

On dissolution of a partnership in England between a naturalized British subject and alien enemies, the former being appointed receiver. it was held the latter could sue for partnership debts which defendants could not withhold as payments to the enemy. Ex parte Boussmacher (1806) (13 Ves., 71), and Mercedes Daimler Motor Co. *v.* Mandslay Motor Co. (1915) (31 T. L. R.) followed.

(*b*) *Stay of suit due to outbreak of war.*

Robinson & Co. *v.* Mannheim Continental Insurance Co. (1915) (1 K. B., 155; 84 L. J. (K. B.), 238; 20 Com. Cas., 125); In re Mary, Duchess of Sutherland, et al. *v.* Burna et al. (C. A. 31 L. T. R., 394). Commencement of war does not give right to have action stayed when brought before by British plaintiffs against a German insurance company.

(*c*) *Internment of alien enemy plaintiff.*

Schaffenius *v.* Goldberg (C. A. (1915) W. N. 386; 32 L. T. R., 133). Internment of alien enemy plaintiff did not affect his right to prosecute an action brought by him as registered alien before internment.

(*d*) *Right of appeal.*

Porter *v.* Freudenberg (C. A. (1915), 1 J. B., 857; 84 L. J. (K. B.), 1001; 20 Com. Cas., 189); Orenstein & Koppel *v.* Egyptian Phosphate Co. Ct. Sess. (Sc.) (1915 S. C. 55); A. A. F. in Berlin Chem. Works *v.* Levinstein (C. A. 84 L. J. (Ch.), 842; 32 R. P. C., 140; 112 L. T. R., 963). Alien enemy plaintiff in action commenced before war has no right of appeal which is stayed until conclusion of peace.

Welsbach Light Co. of Australasia (Ltd.) *v.* Commonwealth of Australia and Attorney General of Australia (J. C. 33 T. L. R., 332). The Attorney General of Australia, acting under the trading with the enemy act, made a declaration that the petitioners were carried on for the benefit of enemies and succeeded in bringing the business to a standstill. They brought action against him denying his allegation and alleging that his act was

ultra vires. A demurrer was sustained and the appeal to His Majesty in council denied.

H. *All executory contracts become invalid on breaking out of war.*

Arnold Karberg & Co. *v.* Blythe, Green, Jourdan & Co. (C. A. 60 S. J., 156); Duncan Fox & Co. *v.* Schrempft & Co. (C. A. (1915) 3 K. B., 355; 84 L. J. (K. B.), 2206; 20 Com. Cas., 337; 113 L. T., 600); Grey (Edward) & Co. *v.* Tolme & Runge (31 T. L. R., 551); In re Shipton, Anderson & Co. (Div. Ct. (1915), 3 K. B., 676; 84 L. J. (K. B.), 2137; (1915) W. N., 304; 31 T. L. R., 598); Stevenson *v.* Aktien Gesselschaft (1916) (1 K. B., 763); Distington Hematite Iron Co. *v.* Possehl & Co. (1916), (1 K. B., 811; 85 L. J. (K. B.), 919; (1916) W. N., 117; 32 T. L. R. 349). A contract between an English company and a German firm provided that the German firm was to take a certain quantity of pig iron yearly, but upon failure to do so would incur no liability other than the loss of control of the output. The vendor agreed that the purchaser should be considered as its sole agent. It was held that as this contract involved a continuing effort on both sides, it was dissolved, and not merely suspended, on the outbreak of war.

Zinc Corporation Ld. *v.* Hirsh (C. A. (1916), 1 K. B., 541; 85 L. J.; K. B., 565; 21 Com. Cas., 273; 114 L. T., 222; (1916), W. N., 11; 32 T. L. R., 232). The plaintiffs, an English company, made a continuing contract to sell to a German company the entire production of zinc concentrates from their mine in Australia. The contract contained a prohibition against the plaintiffs selling to anyone else, and further enumerated various causes which were stipulated as reasons for a failure to deliver the concentrates. War was not specified as a cause of suspension.

It was held that if war was construed as a cause of suspension of delivery, it would result in a construction of the contract as still existing, with the result that the prohibition upon the plaintiffs against selling to any but the German purchaser would be operative, and that

therefore it was for the public good to consider the cancellation of the contract as having occurred from the outbreak of the war.

I. *Agency.*

Tingley *v.* Muller (C. A. (1917), W. N., 180; 116 L. T. 482; 33 T. L. R., 369; 61 S. J., 478). A contract for the sale of land was entered into between an English purchaser and a German resident in England and a deposit paid. The vendor left for Germany, becoming an alien enemy, but left a power of attorney in an English solicitor to complete the sale. *Held*, that the power of attorney was not revoked by the vendor becoming an alien enemy.

Maxwell *v.* Grunhert (C. A., 31; T. L. R., 79). An agent in England of an alien enemy principal is not entitled to bring an action for a decree that he is entitled to called debts and for appointment of a receiver.

J. *Goods, wares, and merchandise.*

King *v.* Oppenheimer (1915) (2 K. B., 755). Held, that certain transfers made from lithograph stones in Germany were goods, wares, and merchandise.

K. *Enemy property.*

In re Bankfur Handel & Co. (1915) (1 ch., 848; 84 L. J. (Ch.) 435; 113 L. T., 228). A debtor to an alien enemy is not a person who holds or manages for or on behalf of an enemy any property.

L. *Contracts of allied subjects.*

Kreglinger & Co. *v.* Cohen & Co. (21 T. L. R., 592); Wolf & Sons *v.* Carr et al. (C. A. (1915), W. N., 195; 31 T. L. R., 407). *Held*, that plaintiffs, allied subjects, could not sue for breach of contract made before the war with persons who became alien enemies at outbreak of war and repudiated such contracts as same became illegal at outbreak of war.

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Auditor
A. F. Johnson

Manager Foreign Department
Franz Meyer

Statement of Condition

September 11, 1917

RESOURCES

Loans and Discounts	$242,940,542.18
U. S. Bonds Borrowed	1,480,000.00
U. S. Certificates of Indebtedness	10,430,000.00
Other Bonds, Securities, etc.	24,504,979.28
Banking House	2,000,000.00
Due from Banks and Bankers	11,999,927.78
Cash, Exchanges and due from Federal Reserve Bank	72,247,424.89
Customers' Liability under Letters of Credit, Acceptances, etc.	39,646,874.13
Interest Accrued	991,615.98
	$406,241,364.24

LIABILITIES

Capital, Surplus and Undivided Profits	$ 45,864,385.99
Deposits	317,544,135.74
Letters of Credit and Acceptances	36,613,943.18
Unearned Discount	1,498,899.33
Other Liabilities	4,720,000.00
	$406,241,364.24

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